

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
COUNTY OF NEWPORT**

At a meeting of the Town Council of the Town of Tiverton, County and State aforesaid, held at the Tiverton Town Hall, 343 Highland Road, on the 9th day of December 2013 A.D. at 7:00 p.m.

President Roderick opened the meeting with the Pledge of Allegiance to the Flag.

<b>Roll Call:</b>	<b>Edward A. Roderick-President</b>	<b>William P. Gerlach</b>
	<b>Denise M. deMedeiros-Vice President - Absent</b>	<b>Jay J. Lambert</b>
	<b>James Arruda</b>	<b>Brett N. Pelletier</b>
	<b>Joan B. Chabot</b>	

Interim Town Administrator/Town Clerk Nancy L. Mello and Town Solicitor Teitz were also present.

**Approval of Consent Agenda:**

All items listed with (CA) are to be considered routine by the Town Council and will be enacted by one motion. There will be no separate discussion of these items unless a member of the Council or a member of the public so requests, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

President Roderick read the items on the Consent Agenda, requested removal of item CA5, Thomas Ramotowski, Chairman Fogland Beach Oversight Committee – Request Update of Chapter 54 Town Code Regarding Dogs in the Fogland Conservation Area – Referred to Town Solicitor.

Councilor Lambert made a motion, seconded by Councilor Chabot to approve the remainder of the Consent Agenda except for CA5. Motion passed unanimously.

The Consent Agenda was as follows:

**CONSENT AGENDA**

**A-1-Approval of Minutes of Previous Meetings:**

- a. Approval of Amended Minutes Regular Council Meeting November 12, 2013
- b. Approval of Minutes Regular Council Meeting November 25, 2013- Councilor Roderick Abstained - Absent
- c. Approval of Executive Session Minutes November 25, 2013-Councilor Roderick Abstained - Absent
- d. Approval of Council Workshop Minutes November 19, 2013-Councilor Roderick Abstained - Absent

**A-2-Receipt of Minutes from the Following Boards, Commissions:**

- a. Fogland Beach Oversight Committee
- b. Prevention Coalition

**A-3-Correspondence – Receive and File:**

- a. Prevention Coalition November News Letter

**A-4-Town Clerk – Extension of Bay Street Moratorium to June 30, 2014**

**A-6-Kate Michaud, Administrative Officer – November Activities Report and Memorandum to Commissions, Water Districts, Departments, etc. Seeking Input on Form Based Code as Follow-up to Joint Council/Planning Board Workshop**

**A-7-Distribution of Department Head Monthly Reports for November**

**BUSINESS BROUGHT BEFORE THE COUNCIL**

**A-5-Thomas Ramotowski, Chairman Fogland Beach Oversight Committee – Request Update of Chapter 54 Town Code Regarding Dogs in the Fogland Conservation Area – Referred to Town Solicitor**

Tom Ramotowski, Chairman of the Fogland Beach Oversight Committee (FBOC) was requesting an update to the Code, Chapter 54 regarding unleashed dogs in the Fogland Conservation area. The Animal Control officer does not enforce in Conservation areas out of season. Need to change the off summer leash program. Solicitor Teitz will discuss with Chairman Ramotowski, Police Chief Thomas Blakey and the Animal Control Officer.

Councilor Lambert made a motion, seconded by Councilor Chabot to approve CA5, Thomas Ramotowski, Chairman Fogland Beach Oversight Committee – Request Update of Chapter 54 Town Code Regarding Dogs in the Fogland Conservation Area – Referred to Town Solicitor. Motion passed unanimously.

### **OPEN PUBLIC FORUM**

President Roderick wanted the public to understand they would be allowed to speak but the Council cannot comment on items not before the Council for discussion on the agenda.

Barbara Pelletier noted a disconnect of information regarding Boards and Commissions being informed on what they are doing. For example, the Economic Development Commission did not know Mrs. Pelletier is the town representative to the Newport Tourism bureau. May be a job for the new town manager. Suggested thinking about unique events for Tiverton, set timelines. Fort Barton is underused, maybe get pay binoculars.

Shane and Lisa Gendreau spoke about the DPW letter recently received regarding suspension of snow plowing operations. Have streetlights and trash pickup, something needs to be done, needs to be put on the agenda. Nicole Robinson, another Cynthia Avenue resident, questioned why this decision was made, cannot get to work if the street is not plowed. Councilor Pelletier questioned the Solicitor on adding this to the agenda. Solicitor Teitz explained it could be added to the agenda for discussion and referral. As far the question of adding to the agenda regarding public safety, has to be urgent and an unanticipated action.

Councilor Pelletier made a motion, seconded by Councilor Arruda to add the item of Cynthia Avenue service suspension to the agenda for discussion purposes. Motion passed unanimously.

### **ADDED TO THE AGENDA FOR DISCUSSION PURPOSES: CYNTHIA AVENUE SERVICES**

President Roderick reminded the audience, the Council can only listen and discuss between themselves. Councilor Pelletier noted the Council did not have any information before them. Discussion followed. Item is to be added to the Special Meeting on December 19<sup>th</sup>.

### **PUBLIC HEARINGS & PUBLIC PRESENTATIONS:**

#### **Public Hearing on Proposed Ordinance Amendment – Appendix C, Sewers and Sewage Disposal – Article IX, Onsite Wastewater Management - Section 18-9.6 (3) Education Program and Phased Implementation**

President Roderick opened the Public Hearing on the proposed ordinance amendment on the phased implementation for Wastewater Management. Wastewater Management (WW) Superintendent John Lincourt along with WW committee members, Christopher Nearpass and Jeffrey Stearns answered questions on this proposed amendment. Mr. Lincourt explained the original ordinance set specific dates for specific areas, need flexibility to look at other areas of Town as needed. North Tiverton needs to be looked at relative to the facilities Plan. Solicitor Teitz noted the implementation dates were being removed. Mr. Lincourt explained has taken more time to inspect areas. Councilor Chabot suggested adding wording to report back to the Town Council on an annual basis. Mr. Lincourt agreed would add as part of the annual report. Councilor Gerlach suggested the report be semi-annually. President Roderick called for comment from the public three times, hearing none closed the Public Hearing.

Mr. Lincourt noted this would get people to look at septic systems on a more regular basis. Councilor Chabot suggested adding additional language, as shown in the Onsite Wastewater Implementation Plan, the original wording reference. Mr. Lincourt explained the drawback of the original map only dealt with watershed areas, put the rest of the Town in one grouping, want to have flexibility for other areas. Town Clerk Mello questioned if this was needed to form the sewer district. Mr. Lincourt affirmed. President Roderick suggested all corrections be made and brought back at the next Council meeting including the map, the report to the Council and wording changes.

Councilor Pelletier made a motion, seconded by Councilor Chabot to Approve the Ordinance Amendment to Appendix C, Sewers and Sewage Disposal – Article IX, Onsite Wastewater Management, (OWM)

Section 18-9.6 (3) Education Program and Phased Implementation as Amended by the Council. Motion passed unanimously.

**The Adopted Ordinance Amendment attached to end of minutes.**

### **TOWN COUNCIL SITTING AS BOARD OF LICENSING**

#### **ADVERTISED PUBLIC HEARINGS**

##### **Hess Gas Station #39211, 1308 Crandall Road – Request to Expand Victualling License to Operate Between 2:00 AM and 6:00 AM (24 Hours) – Subject to Meeting All Legal Requirements**

President Roderick opened the Public Hearing, Lori Crepeau, General Manager, explained looking to extend the hours of operation for the Hess Gas Station. Chief Blakey was concerned about the lights possibly affecting any neighboring residents and the safety aspect, would like to review, discuss with Ms. Crepeau for a better understanding. DPW Director Berlucchi supported, liked having another source for gasoline. Solicitor Teitz explained, can be open for gas, with selling food need a victualing license, approval from the Council to operate from 2 to 6am. Like other licenses will be an annual renewal. Councilor Arruda suggested continuing to the next meeting for the report from Chief Blakey.

Councilor Arruda made a motion, seconded by Councilor Chabot to continue the Request to Expand Victualling License to Operate between 2:00 am and 6:00 am at Hess Gas Station. Motion passed 5-0-1; Councilor Pelletier abstained, not at Council table when vote was taken.

#### **APPOINTMENTS & RESIGNATIONS:**

#### **UNFINISHED BUSINESS:**

#### **FINANCIAL BUSINESS:**

##### **Interim Administrator – Tax Assessor David Robert**

##### **a.Request Approval of Annual Salary Increase Effective December 11, 2013**

Interim T/A Nancy Mello explained a performance evaluation would normally be done first. Not in a position to do that evaluation, elected to have Mr. Robert do a detail goals completed over past year and goals for next year. Mr. Robert is in the second year of his contract, recommend a 2% increase, with one-time adjustment for longevity; which is now removed from contract as with Senior Center and Tax Collector contracts. Mr. Robert explained, with the Revaluation coming up was concerned about staffing, will be coming forward with an RFP in January.

Councilor Gerlach made a motion, seconded by Councilor Chabot to Approve the Salary Increase for Tax Assessor, Dave Robert, a 2% increase and a onetime adjustment of \$1,300 for longevity, to \$68,013 for year two of a three year contract. Motion passed unanimously.

##### **Industrial Park – Request Authorization for Payment of Promissory Note Due to Paul Giroux d/b/a Giroux & Co - \$12,500 Settlement Agreement and Mutual Release**

Solicitor Teitz explained this issue goes back to 2008 and before, prior to his tenure as Solicitor. The Town Council at the time entered into a listing agreement with Paul Giroux to sell lots at the Industrial Park. Mr. Giroux procured several buyers, the Town declined, came to a mutual settlement Mr. Giroux would be paid \$10,000 from sale of first lot sold or by December 31, 2013 including simple interest at 5% which comes to \$12,500. Councilor Chabot noted, this was not in the budget. Solicitor Teitz explained it was going to be paid out of the proceeds from first sale, part of the Town's legal obligation to settle the dispute at the time. President Roderick requested the Clerk to search the accounts.

Councilor Gerlach made a motion, seconded by Councilor Pelletier to request the Interim Town Administrator to pull from Accounts to pay the Promissory Note due by December 31, 2013. Motion passed unanimously.

## **NEW BUSINESS:**

### **Sandywoods Land Trust LLC – Request Acceptance by the Town of Roosevelt Drive and a Portion of Cornell Road (Extension of the Northern End) and Authorization to Release Surety**

#### **a.Planning Board Recommendation**

Jay Lynch and Steve Ostiguy appeared before the Council for Acceptance of a portion of Cornell Road and Roosevelt Drive and for the release of surety. Mr. Ostiguy explained both of the roads, upgraded to Town standards for drainage and paving. Solicitor Teitz noted, this is the way it should be done. Delineates a portion of a public road still privately maintained as indicated on the plans. DPW Director Berlucchi recommended acceptance and the Planning Board recommended acceptance and the release of the surety.

Councilor Chabot made a motion, seconded by Councilor Pelletier to Accept the Improvements to Cornell Road and Accept Roosevelt Avenue from Bulgarmarsh Road to the cul de sac at Muse Way and Release the Surety. Motion passed unanimously.

### **Thomas Ramotowski, Chair Fogland Beach Oversight Committee- Cooperative Agreement Between the Town and RIDEM Regarding Fogland Boat Launch Expiring on December 30, 2014**

Tom Ramotowski, Chair of the FBOC brought to the Council's attention the possibility of extending the agreement between the Town and RIDEM regarding the Fogland Boat Launch. DEM would provide the materials, however they have indicated they may not have the money or want to extend the agreement. Still have time, wanted to bring to the Council's attention. Councilor Lambert suggested forwarding to the Harbor Commission for comments and recommendation and return that back to the Council. Chairman Ramotowski explained the Town maintains the launch and the parking area, will find out if the State is still interested in renewing. Christopher Clarendon, representing the Harbor Commission noted the Harbor Commission was aware of the issues and the timeline. Do not know if DEM will improve the boat ramp, current ramp not usable at low tide. If DEM decides not to help with the ramp, it has to go before Coastal Resources Management Commission (CRMC), the ultimate authority, Council cannot override. For larger vessels significant work would have to be done, dredged and permanently reinforced, a major undertaking. The Harbor Commission and FBOC are aware of the issue. DPW Director Berlucchi requested this also be sent to the Recreation Commission for comment. Councilor Chabot noted if work needs to be done would have to decide if it would be in the 2014/2015 budget.

### **Thomas Ramotowski, Chair Tiverton Conservation Commission – Update to Council Regarding Town's Drinking Water Reservoir Ordinance – Update on Stafford Pond Issues Related to Preserving the Pond's Water Quality**

Tom Ramotowski, Chairman of the Conservation Commission updated the Council on Stafford Pond water quality issues, report required in Section 15-5 of the Code of Ordinances. A meeting with residents was conducted on November 7<sup>th</sup>, went over the findings of high levels of phosphates, discussed a variety of issues. Need to recognize State rules about swimming, State law is clear, not allowed in a drinking water source, they think they have riparian rights regarding this item. The Town should push sewer regulations in this area for inspections, would like stricter enforcement. Residents want the right to have a boat, a dock, looking at grandfather rights. Another issue is high tech catch basins on the highway side. Questioned if the first responders know how to shut down those protection systems. Fire Chief Robert Lloyd explained the Fire Department carries a number of items like pads and chemicals for spills, large spills not able to stop. Chairman Ramotowski noted, still some issue over who owns the water rights. Solicitor Teitz did investigate a previous lawsuit, never a clear resolution, Fall River does maintain water rights, did not find who owns the bottom land, even if the State owns both, have concurrent jurisdiction with them. Chairman Ramotowski was still working on the sea plane issue, did not get a response from the FAA.

Councilor Gerlach thanked the Conservation Commission for leading the effort, trying to start a dialogue, not only for the residents of Stafford Pond although want them to have a voice; but is a drinking water issue.

**Councilors Gerlach and Pelletier – Update on Planning for a Local Business Forum Event in Partnership With the EDC and Approval of Funding**

Councilor Gerlach updated the Council on the planned business forum event, initially brought before the Council in September. Like to acknowledge Susan Gill, member of the EDC who has done a lot of work on this project. The concept is to engage local business owners to create a dialogue. Speakers include Marcel Valois, RI Economic Development Commission, Jody Sullivan, Executive Director Newport County Chamber of Commerce and Scott Humphrey, Chairman of the Tiverton EDC. The event will be on Tuesday, February 11, 2014 from 6 to 8 pm at the Meeting House at Four Corners, 100 people maximum. Trying to get a local caterer at a modest price for light refreshments. Have worked with Mary Sexton on graphic design postcard, plan on mailing postcards to 500 local business owners, posting at high local traffic areas, with local papers and the website. Will moderate with Councilor Pelletier, agenda includes presentations, networking break and input session. Like to mail postcards by January 3<sup>rd</sup> if approved. Estimated cost \$1,521, requesting 50% of the funding be shared with the EDC, not to exceed \$800, coming out of the Council Contingency Fund. Councilor Pelletier was looking for a direct line for telephone responses. Kate Michaud, Planning Board Administrative Officer, volunteered the Planning Board phone number, 625-6718.

Councilor Arruda made a motion, seconded by Councilor Lambert to split the cost between the Town Council and the EDC not to exceed \$800 from Council Contingency. Motion passed unanimously.

Councilor Pelletier gave many thanks to Councilors Gerlach, Pelletier and to Susan Gill.

**BIDS AND REQUESTS FOR PROPOSALS:**

**TOWN ADMINISTRATOR ITEMS AND ANNOUNCEMENTS:**

1. Police Chief Blakey, the United States Marine Corps and the Cardi Brothers will be doing the Toys for Tots program. Contact Chief Blakey or the Clerk with names of local families. Chief Blakey explained, in the past have gotten plenty of toys for younger children, looking for gift cards for older kids. Can drop off at Police Station or with Mrs. Mello.
2. The DPW Free Holiday Rubbish bag program will be limited to 2 free non PAYT rubbish bags per household collected from 12/30/13 to 1/4/14. Annual DPW calendars are being mailed next week.
3. Reminder, the Comp Plan Advisory Committee will be meeting tomorrow at 7pm at the Town Hall.
4. Fire on Main Road on Saturday night, help from surrounding communities received.

**COUNCIL ANNOUNCEMENTS, COMMENTS AND QUESTIONS:**

Councilor Pelletier noted this Thursday at 6:00 pm, Evan Smith, Discover Newport Tourism speaking at EDC meeting at Town Hall. Councilor Gerlach requested an update in January on the RFP for the Industrial Park.

**TOWN SOLICITOR – ITEMS AND ANNOUNCEMENTS:**

**1. LAL Construction, Inc. et al v. Town of Tiverton**

**a. Notice of Hearing on Motion - Friday, January 17, 2014 at 10am in U.S. District Court**

**b. Atty Brainsky Notice to Take Deposition of James Goncalo**

Solicitor Teitz updated, being handled by the Interlocal Trust, hearing scheduled January 17, 2014, the Plaintiffs still trying to get discovery done. On the Deposition, Attorney DeSisto not available, working to postpone, still have to try the Superior Court case. Part of their argument claims they were enticed by us to use them as a transfer station.

**2. Sakonnet River Bridge Tolls Litigation**

**a. Document #62 Declaration of Expert, #60 Plaintiff's Motion for Partial Summary Judgment, #61 Plaintiff's Statement of Undisputed Facts, #60-1 Memo in Support of Summary Judgment**

**b. Document #67 Plaintiff's Response to Motion to Strike, #66 Reply Memorandum in Support of Motion Summary Judgment, #64-2 Exhibit B, #64-1 Exhibit A, #64 Defendant's Objection to Motion for Summary Judgment, #65 Defendant's Motion to Strike Declaration in Support of Plaintiffs Motion for Summary Judgment c. Notice of Hearing on Motions – Wednesday, December 11, 2013**

Solicitor Teitz explained the key thing in 2a is the Motion for Partial Summary Judgment, basically says it is too late to impose tolls, mentions the Statute for Freedom of Tolls Act. The exceptions are brand new bridges or greatly expanded, cannot impose a toll before it's completed. They say is not completed, no dispute when it opened, K2a included a report from experts hired by the Towns from the Federal Highway Administration. The Towns are still vigorously fighting the tolls. Not surprised to find out about the meeting this Wednesday at 3pm, just found out.

### **3. Proposed Ordinance Amendment – Chapter 30, Article II Municipal Court**

#### **a. Schedule Public Hearing January 27, 2014**

This proposed amendment came from a list of matters pursuing to Superior Court. Revealed a split in procedure, the north half of the State has one procedure for filing an appeal, South County which includes Newport County has a different procedure. Trying to change the Town ordinance to match procedure wise on what is being done, notice of appeal and the audio records kept. Trying to make clear a record of the Court does not include that tape, not part of the official record; it would have to be transcribed. Made some correction for everyday violations, took out specific court costs, looking to schedule for January 27, 2014. Talked to the Municipal Court Judge about these items, is in concurrence.

Councilor Gerlach made a motion, seconded by Councilor Chabot to Schedule a Public Hearing on January 27, 2014 on the Proposed Ordinance Amendment. Motion passed unanimously.

#### **Letter to Quarry License Holders**

Solicitor Teitz handed out copies of a letter sending out to quarry owners, technically Earth Removal License, to renew the license and to set forth the requirements, going out this week. Set a time frame for deadline of January 27, 2014 in order to report to the Council. Working with Kate Michaud for the Planning Board schedule. Trying to contact the attorneys for the owners as well. There is a variety in the quality of the plans, want to put them on notice, going forward plan to require they be recorded in land evidence records.

#### **TOWN CLERK ANNOUNCEMENTS:**

There were no announcements from the Town Clerk.

#### **CLOSED EXECUTIVE SESSION:**

Solicitor Teitz requested a correction to number 1, should not have Pending Litigation.

#### **1. Solicitor – 42-46-5(a) (5) - Acquisition of Real Property for Public Purposes – Stone Bridge Gas Station**

#### **2. Town Solicitor - 42-46-5(a) (4) – Investigation – Maintenance Foreman**

#### **3. Town Solicitor–42-46-5(a) (2) – Litigation - Faulkner vs. Town of Tiverton – C.A. No: NC-13-0443**

#### **4. Town Solicitor – 42-46-5(a) (2) - Litigation – Sandywoods Homes, Inc. et. al. v David Robert in His Capacity of Tax Assessor for Town of Tiverton**

#### **5. Town Solicitor – 42-46-5(a) (2) – Litigation – Bay Street Contamination**

Councilor Lambert made a motion, seconded by Councilor Chabot to enter into Closed Executive Session pursuant to 42-46-5(a) (5) - Acquisition of Real Property for Public Purposes – Stone Bridge Gas Station. Motion passed unanimously.

Councilor Lambert made a motion, seconded by Councilor Chabot to remain in Closed Executive Session pursuant to 42-46-5(a) (4) - Investigation – Maintenance Foreman. Motion passed unanimously.

Councilor Lambert motioned, seconded by Councilor Chabot to stay in Closed Executive Session pursuant to 42-46-5 (a) (2) - Litigation - Faulkner vs. Town of Tiverton #NC-13-0443. Motion passed unanimously.

Councilor Lambert made a motion, seconded by Councilor Chabot to remain in Closed Executive Session pursuant to 42-46-5(a) (2) - Litigation – Sandywoods Homes, Inc. et. al. v David Robert in His Capacity of Tax Assessor for Town of Tiverton. Motion passed unanimously.

Councilor Lambert made a motion, seconded by Councilor Chabot to stay in Closed Executive Session pursuant to 42-46-5(a) (2) – Litigation – Bay Street Contamination. Motion passed unanimously

The Council entered into Executive Session at approximately 9:30 p.m.

The Council returned to Open Session at approximately 10:10 p.m.

**OPEN SESSION:**

In Open Session President Roderick announced no action was taken on items 1, 2 and 3. Action was taken on item 4 – Sandywoods Homes v. Tax Assessor. When documents are completed and filed in Court agreement will be made public. Action was also taken on Bay Street Contamination item #5.

Councilor Pelletier motioned, seconded by Councilor Chabot to seal the minutes of Executive Session, passed unanimously.

Councilor Chabot motioned, seconded by Councilor Pelletier to add to the agenda for discussion purposes only an Email received by President Roderick from the Newport Unified Exploratory High School Committee. Motion passed unanimously.

**Added to the Agenda for Discussion- Email Received by President Roderick**

President Roderick briefly read, according to the email Tiverton Town Council members are invited to a meeting. When this issue was raised in October it was referred to the Tiverton School Committee. President Roderick suggested waiting until a recommendation has been received from the School Committee.

**ADJOURNMENT:**

Councilor Gerlach motioned to adjourn, seconded by Councilor Arruda, passed unanimously.

Council adjourned at approximately 10:15p.m.

A True Copy.

ATTEST: \_\_\_\_\_ Nancy L. Mello, Town Clerk

Town of Tiverton  
Wastewater Management Commission  
Proposed Alternate Language  
for  
SEWERS AND SEWAGE DISPOSAL §18-9  
2 October 2013

Proposed Alternate Language

Sec. 18-9.6 Education Program and Phased Implementation.

- 3) *Phased Implementation.* The implementation of this ordinance and the timing of the Maintenance Inspections for specific areas in Town shall be phased in accordance with a schedule as determined and approved by the Wastewater Management Commission and administered by the Wastewater Superintendent. The following areas shall be identified at a minimum:
- a. *Stafford Pond Watershed*
  - b. *Nanaquaket Pond Watershed*
  - c. *Sakonnet Waterfront*
  - d. *Nonquit Pond Watershed*
  - e. *Remainder of Town*

The schedule and its adequacy to meet current needs shall be reviewed by the Wastewater Management Commission annually and the status of the program shall be reported to the Town Council annually.